BEFORE

THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2019-365-E

In the Matter of:	)
	)
Exploration of a South Carolina Competitive Procurement Program as Allowed by South Carolina Code Section 58-41-20(E)(2)	)
	)
	)

RESPONSIVE TESTIMONY OF STEVEN J. LEVITAS

ON BEHALF OF

THE SOUTH CAROLINA SOLAR BUSINESS ALLIANCE, INC.

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. Steven J. Levitas. My business address is 130 Roberts Street, Asheville, North Carolina 28801.

Q. ARE YOU THE SAME STEVEN LEVITAS WHO FILED TESTIMONY IN THIS DOCKET ON FEBRUARY 22, 2021?

A. I am. Today I am filing reply testimony responding to points raised by other witnesses.

Q. PLEASE PROVIDE AN OVERVIEW OF YOUR RESPONSIVE TESTIMONY.

A. As the Commission considers how to proceed in this docket, it will find a surprising level of agreement among the parties about the benefits of competitive procurement, and the general elements and aims that such programs should have. In light of the testimony received, the Commission is in a sound position to determine that competitive procurement of renewable resources is in the public interest, and to approve guidelines that will inform forthcoming procurements by South Carolina's investor-owned electric utilities. My testimony today responds to some of the points raised by other witnesses and notes the wide areas of agreement.

Q. PLEASE SUMMARIZE YOUR CONCLUSIONS AND RECOMMENDATIONS.

A. My direct testimony discussed the public benefits of, and the growing trend toward, competition in generation procurement around the country; the process for identifying resources to be procured using integrated resource planning; issues raised by utility participation in competitive solicitations; and program design. On this last point, I submitted proposed guidelines addressing independent administration, interconnection and system upgrade costs, market information transparency, and use of pre-approved form

contracts. Finally, I recommended that the Commission adopt an approach similar to North Carolina's CPRE program in the near term and consider migrating to an "all source" procurement program similar to that utilized in Colorado over the longer term.

The testimony submitted by other witnesses reinforces the benefits of competitive procurement and best practices for a well-run program. As I discuss below, there is general agreement that well-run competitive procurement programs can deliver benefits for ratepayers through market-based price discipline. Second, there seems to be consensus that integrated resource planning provides a ready mechanism for identifying resource needs that competitive solicitation can meet. Third, the parties agree on the need for information transparency, pre-approved form contracts, and clarity on interconnection and upgrade costs to ensure fairness and efficiency. And fourth, there is common recognition that measures are needed to address utility participation in the utility's own auction, although different opinions have been offered on how best to address that issue. I stand by my recommendation to follow the approach used in North Carolina's CPRE program, with an independent administrator carrying out the solicitation working closely with the utility and with Commission oversight.

Q. IS THERE AGREEMENT AMONG THE PARTIES THAT COMPETITIVE PROCUREMENT OF ELECTRIC GENERATION RESOURCES CAN DELIVER RATEPAYER BENEFITS?

A. There seems to be. As I noted in my direct testimony, free markets and fair competition promote innovation and efficiency – forces that ultimately lower consumer costs. That is why much of the country has moved to organized wholesale electrical generation markets that feature regular auctions for energy and capacity together with open access transmission

tariffs. These wholesale markets are successfully meeting security and reliability requirements while delivering affordable, competitively priced electricity to consumers. DESC Witness Kassis agrees that competitive procurement programs have been implemented to accelerate and "more cost-effectively advance policy objectives such as the adoption of renewable generation" (Kassis at 6) while SACE/SCCL Witness Sercy cites numerous benefits of competitive procurement including least-cost procurement, design flexibility, price discovery, and alignment with utility planning, and agrees with the observation made on page 21 of this Commission's Order 2020-832 that "[c]ompetitive procurement of [near term solar and/or storage] generation resources creates an opportunity for ratepayer savings." (Sercy at 8.) In addition to the competitive procurements mentioned in my testimony (in North Carolina, Virginia, Colorado, and Michigan), Witness Sercy notes that programs have been successfully undertaken by Georgia Power, the Tennessee Valley Authority (TVA), Florida Municipal Power Agency, as well as Santee Cooper and Central Electric Power Cooperative here in South Carolina. (Sercy at 9.) Renewable RFPs are also underway in Ohio, Indiana, Nebraska, Montana, Nevada, Arizona, and California according to an industry publication keeping track of current requests for proposals RFPs).[1]

[1] https://solarindustrymag.com/category/solar-news/rfp (accessed February 27, 2021).

In short, thanks to the benefits it brings to ratepayers, competitive procurement is a pervasive and growing utility best-practice for generation procurement.

Q. DO OTHER WITNESSES AGREE ON THE USE OF INTEGRATED RESOURCE PLANS AS FORMING A BASIS FOR COMPETITIVE PROCUREMENTS?

A. Yes. In the absence of a legislative body mandating a defined procurement goal, as in Virginia and North Carolina, the integrated resource planning (IRP) process can determine how much and what type of new generation should be procured. Dominion witness Koujak notes that competitive solicitation can be used to satisfy needs identified in an IRP or which are identified by a state directive, such as the directives I mentioned in Virginia and North Carolina. (Koujak at 5, 7.) Witness Brown similarly agrees that traditionally, volume is based on IRP-demonstrated needs, and that absent a showing of need the volume of procurement could be established through consideration of a variety of factors spelled out in state policy or law, as happened in North Carolina. (Brown at 14.) Witness Brown also correctly observes that, even in the absence of capacity need that can be filled by renewables, an IRP can select the resource as a potential economic source of energy without changing the total amount of resource required to meet peak demand. (Brown at 21.) Witness Sercy details how an IRP can inform design of a competitive procurement program by, for example, identifying procurement volumes and timing, cost cap levels, and technologies to emphasize. (Sercy at 16.) As stated in my opening testimony, South

Carolina's new, robust IRP process as overseen and implemented by this Commission provides a ready platform for the use of competitive procurement.

Q. IS THERE AGREEMENT THAT COMPETITIVE SOLICITATIONS SHOULD BE TRANSPARENT, HAVE CLEAR BIDDER GUIDELINES, AND PRODUCE PUBLIC RESULTS?

A. There appears to be. As explained in my opening testimony, the utility undertaking an RFP should provide information about the areas on its transmission system most likely to experience congestion and require network upgrades, and the most advantageous points of interconnection. I agree with DESC Koujak's testimony that access to bidding information should support a "level playing field" (Koujak at 12), and believe such access is all the more essential where non-price factors he mentions such as locational benefits and transmission availability (Koujak at 5) are used to evaluate bids. Unlike the other non-price factors he mentions (financial strength, operating experience, and other indicators of readiness), information about generation and transmission system benefits and challenges will reside with the utility seeking the competitive procurement. Given this lopsided access to information, timely bidder access to relevant information is essential to establishing a "level playing field" for competition. Further, it is essential to have public review of draft solicitations and their terms as well as public reporting on solicitation participation and pricing ranges – elements that DESC witness Koujak identifies as best practices. (Koujak at 15.)

Q. DO YOU AGREE WITH DESC WITNESS KOUJAK'S RECOMMENDATION FOR GENERAL PROCUREMENT GUIDELINES FOR THE CONDUCT OF RFPs?

A. I do. DESC Witness Koujak testifies in support of "general procurement guidelines for the conduct of RFPs, ensuring that decisions are rendered with integrity, transparency, and fairness," and to "ensure a consistent and fair evaluation" recommends evaluation guidance "that sets the course for the qualitative and quantitative evaluation prior to evaluation of bids." (Koujak at 12.) I agree with these recommendations but believe the appropriate body to set general guidelines is the Commission, not the utility, for several reasons. First, the statute giving rise to this proceeding authorizes the Commission to open a docket for "creating programs" for the competitive procurement of energy and capacity from renewable energy facilities within the respective utilities' balancing authority areas where the Commission finds such action to be in the public interest. S.C. Code Ann. § 58-41-10(E)(2). In creating such programs, the Commission must establish guidelines to ensure that the programs function to achieve the Commission's intended results.

Second, having high-level guidelines for RFPs that are consistent across utilities will be administratively simpler for both this Commission and for participants. Competitive procurements are complex enough without adding inconsistent guidelines and practices among utilities (to say nothing of this Commission having to resolve the same high-level questions about procurement structure in three separate dockets). Finally, although the details may differ to account for differences in the utilities' respective systems and resource needs, there is simply no reason for the high-level structure and parameters of procurement to be inconsistent from one utility to the next. The guidelines set forth in my testimony are consistent with the CPRE program already in use by Duke to obtain renewable energy for hundreds of thousands of South Carolina

ratepayers. The Commission should adopt those guidelines and thereby position Duke and DESC to be fully prepared to launch competitive procurements once the results of their IRPs are finalized.

Q. IS THERE AGREEMENT THAT COMPETITIVE SOLICITATIONS SHOULD BE CONDUCTED BASED ON NON-NEGOTIABLE FORM CONTRACT DOCUMENTS?

A. There may be. As noted in my testimony and as recognized by other witnesses, PPAs, Build-Own-Transfer Agreements, and Engineering, Procurement and Construction Agreements all contain non-price terms that significantly affect the economics of the transaction and the value of the project to the utility and its ratepayers. These include performance security requirements, force majeure provisions and definitions, and cure rights for events of default. If these terms are subject to negotiation, the bid prices of market participants cannot be compared on an apples-to apples basis and contract negotiation may prolong and complicate the award process. Commercially reasonable form contracts can and should be approved by the Commission, just as they were by the North Carolina Utilities Commission for CPRE and by this Commission for PURPA transactions under Act 62. Dispatchability and curtailment terms, which if left uncertain can make it difficult if not impossible to finance projects, should be addressed either by limiting uncompensated curtailment, as was done with CPRE or by structuring PPA payments based on the capacity made available to the utility rather than the amount of output that the utility actually requires from the facility.

Q. IS THERE AGREEMENT ON THE NEED FOR INDEPENDENT OVERSIGHT OF COMPETITIVE SOLICITATIONS?

A. There appears to be agreement that independent oversight is needed, but the proper degree of oversight should be resolved by the Commission. My testimony proposed guidelines for the Commission's consideration based heavily on North Carolina's CPRE program, and included the selection and role of an Independent Administrator as well as guidelines for communications between market participants and the structure and process for conducting the competitive solicitation. Given the issues identified above with regard to utility or affiliates participating in competitive solicitations, their access to material information regarding network conditions that inform bid pricing and selection, and the utility's interest increasing market share, the best practice is to have a fully independent administrator ("IA") execute the RFP process, as is done with CPRE. While Witness Koujak agrees there should be "appropriate" oversight to ensure "fairness and transparency" (Koujak at 8), he seems to take issue with the concept of independent administration (Koujak at 10). While it is true that utilities possess information essential to an informed RFP structure and bid evaluation, as he notes, that information can be transmitted to the IA as in CPRE, and it is the possession of that information (which can inform affiliate bids and their evaluation) that renders independent administration all the more essential. With respect to information about "interconnection requirements" and "the level of detailed modelling required to conduct an all-source RFP" that Mr. Koujak believes can only be provided by the utility, I would respond that a well-designed RFP can allow the utility to provide that information and analysis to an IA while still addressing competitiveness concerns.

Q. WHAT IS "QUEUE REFORM" AND HOW DOES IT RELATE TO COMPETITIVE SOLICITATIONS?

A. As my testimony explained, the Commission has approved major changes to the procedures governing Duke's study of interconnection requests, and Dominion is in the process of developing similar changes. These new procedures, generally referred to as "queue reform," replace sequential study of interconnection requests with the study of such requests in defined clusters, with the cost of any required network upgrades being spread among participants in the affected cluster. As witness Brown observes, these procedures will facilitate the study of the finalists and ultimate winners in a competitive solicitation being studied collectively. (Brown at 20.) DESC Witness Mainz notes that a proper process should allow ready resources to operate on an "as infrastructure is available" to deliver resource until upgrades are complete. (Mainz at 8.) I would agree, with the caveat that this should not result in truncated contract tenor for the selected project.

Q. IS THERE AGREEMENT THAT UTILITIES SHOULD BE ABLE TO COMPETE IN COMPETITIVE PROCUREMENT?

A. All parties agree that utilities should be able to participate in competitive procurement, but there is some disagreement on how that should be structured given the utility's access to inside information, the benefits of diversification of ownership, and the risks of rate basing assets. As my testimony explained, rate-basing (*i.e.*, allowing full recovery of the capital costs of an asset plus a defined return on equity) creates a variety of potential risks to ratepayers, including construction delays and cost overruns, operational underperformance and uncertainty about long-term market pricing. I therefore recommend in the near term at least, the approach taken by CPRE, where the utility is allowed to act as a market-participant that competes and recovers costs just like an IPP (*i.e.*, through defined

production revenues and for a defined period of time). This arrangement still allows for utility ownership of resources competitively procured in the first instance.

Q. IF UTILITY/AFFILIATE PARTICIPATION IS ALLOWED, SHOULD IT BE CAPPED AS IT IS UNDER DUKE'S CPRE PROGRAM?

A. Yes. Even with oversight of the procurement process by an independent third party, where the utility and/or its affiliates are allowed to act as a market participant in the competitive process (*i.e.*, to compete for the right to sell to the utility) there is the risk of self-dealing and the appearance of impropriety. That is addressed in part through a cap on the percentage of capacity that can be awarded to the utility in the competitive solicitation, such as CPRE's 30% cap.

Q. DO YOU AGREE WITH WITNESS KASSIS'S CHARACTERIZATION IN HIS DIRECT TESTIMONY ON PAGE 5 LINES 15 – 18 THAT PURPA REQUIRES DESC TO PURCHASE POWER FROM QUALIFYING FACILITIES "WITHOUT REGARD FOR NEED, LOCATION, OR IMPACT ON RELIABILITY?"

A. No. PURPA provides that Qualifying Facilities ("QFs") may sell energy and capacity to a utility at the utility's administratively determined avoided cost rate. DESC's avoided cost rates are set by this Commission and are intended to accurately reflect the value of QF energy and capacity to the DESC system. If the utility does not have a need for additional capacity, it is not required to pay the QF for the capacity it provides. Utilities always need energy unless their entire fuel supply is covered by long-term, must-take contracts, which is rarely if ever the case.

As to location and reliability, S.C. Code Annotated 58-41-20(B)(3) specifically provides for "geographic location" as an appropriate consideration when establishing a

utility's methodology for calculating avoided cost rates, and the South Carolina Generator Interconnection Procedures approved by this Commission in 2016 establish the interconnection study process used by DESC to ensure the reliable interconnection and operation of solar facilities on the DESC system.

Q. IS THERE ANY WAY FOR A UTILITY TO AVOID ITS "MUST TAKE" OBLIGATION UNDER PURPA?

A. Yes. The Energy Policy Act of 2005, 42 U.S.C. § 13201 et seq. (2005), amended PURPA by adding, among other provisions, Section 210(m). This section allows a utility to apply for a waiver of its mandatory purchase obligation from QFs if it is located in an area where QFs have non-discriminatory access to markets to sell energy and capacity. As implemented by the Federal Energy Regulatory Commission ("FERC"), utilities in all RTOs/ISOs are eligible to receive such a waiver of the obligation to purchase energy and capacity from QFs larger than 20 MW. The policy rationale of Section 210(m) was that if a QF has a meaningful and non-discriminatory opportunity to sell energy and capacity to buyers other than the utility to which the QF is interconnected, then PURPA's must-purchase requirement would no longer be required. In this way PURPA further supports the development of free and efficient marketplaces for energy and capacity, to the benefit of utility ratepayers.

Q. DOES THIS TYPE OF NON-DISCRIMINATORY ACCESS TO MARKETS FOR ENERGY AND CAPACITY EXIST IN SOUTH CAROLINA?

A. Not at present. Under PURPA and FERC's regulations, utilities located outside of RTOs/ISOs are not eligible for a waiver of the mandatory purchase obligation because QFs in those areas have no meaningful opportunity to sell energy and capacity to a buyer other

than the monopsony utility. Congress and FERC have maintained that in jurisdictions like South Carolina, PURPA's requirements remain sound public policy.

Q. DOES THE CURRENT FRAMEWORK FOR PURPA IN SOUTH CAROLINA CONTINUE TO PROVIDE ROBUST MARKET OPPORTUNITIES FOR SOLAR ENERGY INVESTMENT IN DESC'S SERVICE TERRITORY?

A. No. A combination of factors has resulted in a dearth of new QF development in DESC territory since 2018. These factors include DESC's low 10-year avoided cost rate, uncertainty around integration costs, and the curtailment risk for energy generated by new QF facilities.

Q. DOES COMPETITIVE PROCUREMENT PROVIDE AN ALTERNATIVE MODEL FOR ADDING COST-EFFECTIVE SOLAR ENERGY TO THE DESC SYSTEM?

A. Yes. As detailed in my direct testimony, modeling conducted in accordance with the creation of an integrated resource plan ("IRP") can identify cost effective opportunities to add clean energy resources to meet a utility's energy and capacity needs in a reliable way that also avoids risk associated with an over-reliance on fossil fuel generators and utility generation ownership. Additionally, the competitive procurement of controlled solar resources can increase the flexibility of those resources to the advantage of utility system operations and result in the elimination or mitigation of curtailment risk for those facilities.

And as noted by Duke's witness Mr. Brown, competitive procurement also can be utilized in the implementation of a state's implementation of PURPA. Although FERC has held that competitive procurements cannot be the sole avenue for QFs to pursue their rights under PURPA, states can "channel" PURPA development into voluntary competitive

procurements by providing greater revenue certainty in the form of longer contract duration, as well as other terms that are attractive to QFs. Ratepayers can benefit from such procurements by getting renewable energy at competitively-set rates below avoided cost, and utilities benefit if the contracts include terms desirable to utilities, such as limited dispatchability rights, that are not normally available in PURPA contracts.

Of course, effective regulatory oversight is required to ensure that such procurements do not undermine QFs' PURPA rights or otherwise run afoul of FERC requirements. Such procurements would also have to comport with the requirements of Act 62.

As I mentioned in my Direct Testimony, I was the principal author of a detailed proposal made by the Solar Energy Industries Association to the FERC, to allow for the use of appropriately designed and implemented competitive solicitations as an alternative to traditional PURPA implementation. FERC largely adopted SEIA's proposal in the final version of the revised PURPA regulations that were promulgated last year in Order No. 872.

Although SCSBA does not recommend that the Commission direct competitive procurement as an extension of South Carolina's PURPA implementation in this docket, this is an issue that may be explored in the biennial avoided cost dockets that will commence later this year.

Q. HOW DO YOU RECOMMEND THAT THE COMMISSION PROCEED IN THIS DOCKET?

A. My high-level recommendations for the implementation of competitive procurement of renewable resources in South Carolina are summarized in Section VI of my Prefiled Direct

Testimony. In terms of process, I recommend that the Commission open a docket to consider rulemaking relating to the coordinated resource need planning and competitive procurement of all generation resources (not just renewable), utilizing Colorado's all-source procurement program as a starting point. Realistically, this process could take several years.

In the interim, to address the near-term competitive procurement of renewable energy resources authorized by Act 62 that is the subject of this proceeding, I recommend that the Commission issue an Order in this docket providing that, until such time as more comprehensive rules on competitive procurement in effect, the competitive procurement of renewable resources by utilities subject to the Commission's jurisdiction shall be conducted consistent with the guidelines provided in Exhibit SJL-11 to my Direct Prefiled Testimony, as they may be modified by the Commission based on input from ORS and other interested parties.

I further recommend that the Commission open utility-specific dockets to address the procurement of renewable resources as authorized by Act 62, and establish a procedural schedule in each docket, commencing promptly after approval of the utility's final IRP, to establish the parameters for procurement of renewable resources in its balancing area.

This would be a two-stage proceeding. The first stage would address a narrow set of issues, including (1) the proposed size and scope of the procurement; and (2) the appointment of an Independent Administrator (subject to Commission approval after comment from interested parties).

After the appointment of an IA, the utility and the IA can, in consultation with stakeholders, develop evaluation criteria, a request for proposal (RFP) document setting

forth a process consistent with the guidelines in Exhibit SJL-11, and pro forma PPAs and other contract documents. In the second phase of the proceeding, the RFP and pro forma contracts would be filed for Commission approval, after giving other parties the opportunity for intervention, discovery, filed comments or testimony, and an evidentiary hearing.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes it does.